

ORIGINAL

# FEDERAL COMMUNICATIONS COMMISSION

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In Re Applications of:	)	WT Docket No.:	96-41	
	)			
	)			
LIBERTY CABLE CO., INC.,	)	File Nos.:		
for Private Operational	)	70877		WNTT370
Fixed Microwave Service	)	708778, 713296		WNTM210
Authorization and	)	708779		WNTM385
Modifications	)	708780		WNTT555
	)	708781, 709426, 711937		WNTM212
New York, New York	)	709332		(New)
	)	712203		WNTW782
	)	712218		WNTY584
	)	712219		WNTY605
	)	713295		WNTX889
	)	713300		(New)
	)	717325		(New)

Volume: 11  
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Place: Washington, D.C.  
Date: January 21, 1997

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## HERITAGE REPORTING CORPORATION

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Courtroom 2  
FCC Building  
2000 L Street, N.W.  
Washington, D.C.

Tuesday,  
January 21, 1997

The parties met, pursuant to notice of the Judge  
at 9:37 a.m.

BEFORE: HON. RICHARD L. SIPPEL  
Administrative Law Judge

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1461

FEDERAL COMMUNICATIONS COMMISSION

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	VOIR <u>DIRE</u>
Peter O. Price		1488	1564 1583	1580 1591	

E X H I B I T S

<u>TW/CV:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
41	1594	1594	

Hearing Began: 9:37 a.m.

Hearing Ended: 2:15 p.m.

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P R O C E E D I N G S

9:37 a.m.

JUDGE SIPPEL: Good morning.

ALL: Good morning, Your Honor.

JUDGE SIPPEL: Please be seated. We're on the record. The first order of business this morning on my schedule was to again get a report on the documents and to consider scope of further witnesses and set up a schedule. Does anybody have anything preliminarily that they want to report on?

MR. SPITZER: First, do you want Mr. Price here or should he be in the witness room for this?

JUDGE SIPPEL: I don't see any reason why he shouldn't be. Do you have any objection to him being here for this? Unless we start getting into some questions about --

MR. BECKNER: Well, we may end up talking about something --

JUDGE SIPPEL: Yes. Let's go off the record. I'm going to ask Mr. Price to step out.

(Whereupon, the Witness was excused from the courtroom.)

JUDGE SIPPEL: Back on the record.

MR. SPITZER: And the second small item, Your Honor, the counsel for the Bureau, Cablevision and Time

1 Warner had requested a certain billing records on Thursday  
2 when we were here. And I've just produced those documents.  
3 And for the record, they're Bates numbers 17490 to 17508.

4 JUDGE SIPPEL: All right. Those are the billing  
5 records of the Pepper & Corazzini firm, the two attorneys  
6 that have been --

7 MR. SPITZER: Yes, well, beyond that, Your Honor,  
8 the billing records of Pepper & Corazzini for all Liberty-  
9 related work from January 1, 1995 through May 30, 1995. And  
10 so it includes one or two paralegals as well as the two  
11 attorneys.

12 JUDGE SIPPEL: All right. Now, is this the first  
13 time you've seen these two documents, Mr. Weber?

14 MR. WEBER: Yes, it is, Your Honor.

15 JUDGE SIPPEL: You'll need time to look at those,  
16 too.

17 MR. SPITZER: Your Honor, we've just become aware  
18 since we've put -- had to put some Bates numbers on  
19 documents when we were in Washington, we may have used -- we  
20 may have just duplicated some Bates numbers because this  
21 production obviously was done in New York where we did this  
22 mechanically over the weekend. So there may be some  
23 documents which share certain numbers. We'll clarify this  
24 and if we need to give you a new set of these documents with  
25 new Bates numbers, we'll do so. We'll take care of it.

1 JUDGE SIPPEL: All right. What about the -- what  
2 about the corporate minutes of Liberty. Have they been  
3 looked at? Anybody have anything on that?

4 MR. SPITZER: Your Honor, we have -- it's a lapse  
5 on my part, Your Honor. I did not ask Mr. Milstein  
6 specifically to review those minutes. It's again our belief  
7 that there are no such documents that were formalized  
8 minutes of the meetings. We will get back to you right  
9 after lunch and give you a definitive answer on that.

10 JUDGE SIPPEL: All right. Well, it's important  
11 though that one of -- that an attorney from your firm go  
12 over and look at those minutes.

13 MR. SPITZER: Yes.

14 JUDGE SIPPEL: I'm not going to rely just on Mr.  
15 Milstein looking at them and letting you know that  
16 everything's okay.

17 MR. SPITZER: No, no. Absolutely, Your Honor. If  
18 in fact there are any documents such as minutes, we will  
19 review them personally.

20 JUDGE SIPPEL: Very fine. Now, we -- we didn't --  
21 we didn't cover this when we talked about the Pepper &  
22 Corazzini documents unfortunately. But the question I have  
23 on my notes is -- I made these notes before coming in here  
24 today. I didn't have this note before me last week. But  
25 what about the calendars, the desk calendars of Mr. Lehmkuhl

1 and Mr. Barr? Have they been looked at? Have they been  
2 requested? Have -- anybody know anything about those?

3 MR. SPITZER: Your Honor, I think it's fair to say  
4 they were not requested. We have not specifically looked at  
5 the desk calendars of those two individuals. We have looked  
6 at desk calendars of other individuals involved. But,  
7 again, we will do -- it's a worthwhile inquiry and we will  
8 undertake to do it.

9 JUDGE SIPPEL: All right. That's important  
10 because particularly before -- before Mr. Barr comes in.

11 MR. SPITZER: All right. We will undertake that,  
12 Your Honor.

13 MR. WEBER: And to correct Mr. Spitzer, Your  
14 Honor, they were specifically requested. The document  
15 request did notate desk calendars as well as --

16 MR. SPITZER: Not of the lawyers at Pepper &  
17 Corazzini.

18 MR. WEBER: The -- all attorneys were included  
19 within the scope of --

20 MR. SPITZER: We had conversations about precisely  
21 what we would produce from P&C. And so, I mean, I think --

22 JUDGE SIPPEL: All right. Well, let's -- I'm not  
23 going to get beyond -- I mean, that may be a matter of  
24 contention. But right now, I'm just trying to keep the  
25 train on schedule so to speak. So you know about the need.



1 You're going to look into it. We're going to hear from you  
2 soon about it.

3 MR. SPITZER: That's correct.

4 JUDGE SIPPEL: All right. Then otherwise with the  
5 exception then -- the billing records have just been  
6 produced. And with the exception then of the date of the  
7 desk calendars, of the day calendars, have the Pepper &  
8 Corazzini files been completely and thoroughly and --  
9 reviewed?

10 MR. SPITZER: Yes, Your Honor, by those of us who  
11 are sitting right here.

12 JUDGE SIPPEL: All right. Do you have any more  
13 questions with respect to that, Mr. Weber, the scope of the  
14 culling of the documents of Pepper & Corazzini?

15 MR. WEBER: No, we do not, Your Honor.

16 JUDGE SIPPEL: And would the same be true of the  
17 Constantine law firm records?

18 MR. SPITZER: I don't think there was ever an  
19 understanding with the Bureau that we would search the  
20 Constantine records.

21 JUDGE SIPPEL: Are you confident that there's  
22 nothing in the Constantine records that hasn't been produced  
23 -- that -- that --

24 MR. SPITZER: That bears on this?

25 JUDGE SIPPEL: Yes, that bears on this and, you

1 know, I'm not talking about documents which bear -- which  
2 are protected documents. I'm simply talking about have we  
3 touched all the basis with respect to being sure that  
4 nothing like this April 28th memorandum is going to pop up  
5 again?

6 MR. SPITZER: Yes, Your Honor.

7 JUDGE SIPPEL: All right.

8 MR. SPITZER: Yes, Your Honor.

9 JUDGE SIPPEL: And would that same be true of  
10 the -- of the Liberty files, that is -- and that would be --  
11 you're saying yes.

12 MR. SPITZER: Yes, Your Honor.

13 JUDGE SIPPEL: And that would be both Mr. Milstein  
14 files --

15 MR. SPITZER: Mr. Price --

16 JUDGE SIPPEL: Mr. Price, Mr. Ontiveros --

17 MR. SPITZER: -- and Mr. Nourain.

18 JUDGE SIPPEL: -- and Mr. Nourain.

19 MR. SPITZER: That's correct, Your Honor.

20 JUDGE SIPPEL: All right.

21 MR. SPITZER: And the condition of Mr. Nourain's  
22 files has been testified to. So I think there's some  
23 understanding for some of the confusion.

24 JUDGE SIPPEL: Well, he still has a universe of  
25 documents though that can be gone through one-by-one, page-

1 by-page and that's been done I understand.

2 MR. SPITZER: That has been done, Your Honor.

3 JUDGE SIPPEL: All right. Anything more on that,  
4 Mr. Weber?

5 MR. WEBER: No, not at this time. Some questions  
6 may be arised when going through the documents -- the new  
7 documents that came from the Pepper & Corazzini files.  
8 There are several which we're a little unsure of why they  
9 were not an item in Mr. Price's or Mr. Nourain's files, as  
10 well. But I think I can discuss that with counsel before  
11 they file their -- their reply to Time Warner's request for  
12 the investigation into the discovery matters.

13 JUDGE SIPPEL: All right. Well, anyway, Mr. Price  
14 is here.

15 MR. WEBER: Right.

16 JUDGE SIPPEL: So you can -- at any appropriate  
17 time, you can ask him that line of questioning.

18 MR. WEBER: And I plan to.

19 JUDGE SIPPEL: Mr. Beckner, do you have any more  
20 on this?

21 MR. BECKNER: You mean on the documents?

22 JUDGE SIPPEL: The documents. That's correct.  
23 What I'm trying to do is get a finalization of the  
24 production of documents this morning.

25 MR. BECKNER: No. I mean, we have some questions

1 of Mr. Price that I gather from your conversation with Mr.  
2 Weber you're going to allow those questions about the status  
3 of his own files. I mean, frankly, one of the points that  
4 we raised on our motion wasn't so much that we were finding  
5 fault with the production from the lawyers' files. But we  
6 were and continue to be mystified at how none of these  
7 documents which have come from the lawyers' files seem to  
8 come from the clients' files.

9 I mean, it's not just a question of one or two  
10 failing to come, but all of the inventories which were  
11 produced which was about four and most of the other lawyer -  
12 - attorney-client communications did not seem to come from  
13 any Liberty file with the exception of, you know, recent a  
14 couple of things from Mr. Nourain.

15 MR. SPITZER: Just factually, Your Honor, I mean,  
16 there will always be a moment for a more fuller discussion  
17 of this. But I think Mr. Beckner is just simply wrong in  
18 terms of what he is stating. The inventories were produced  
19 from Mr. Nourain's files. The documents -- the vast  
20 preponderance --

21 MR. BECKNER: Well, Counsel, if you're going to  
22 say that, I'm very interested in that fact because Mr.  
23 Nourain testified that he didn't remember seeing them  
24 before.

25 MR. SPITZER: Well, but they were in his files. I

1 mean, whether or not he remembers them, I --

2 MR. BECKNER: Well, I think that needs --

3 JUDGE SIPPEL: Well, let's not cross those two  
4 wires now.

5 MR. BECKNER: I'm sorry.

6 JUDGE SIPPEL: Those are two distinctly different  
7 things. There will be as -- you know, as we all know -- I  
8 mean, once we finish the testimony here, that -- that starts  
9 the count down for Liberty to file the opposition to your  
10 motion for further inquiry into document discovery. So I am  
11 assuming that we will get a full and complete answer at that  
12 time.

13 However, as I say, anytime that there's a Liberty  
14 witness on the stand, you're free to inquire into this, this  
15 being the documents and what documents each witness had,  
16 what their filing system, what do they do to transmit  
17 information back and forth. There has clearly been  
18 testimony here that -- there has been testimony here I  
19 should say which -- which clearly indicates that there was a  
20 lack of communication of some documentary information down  
21 to Mr. Nourain.

22 Now -- and that comes through even in affidavits  
23 that were filed, this comes through. So I mean it's -- this  
24 is open to further inquiry. But -- all right. I've said  
25 enough on that then. Mr. Holt, are you -- do you have

1 anything more you want to add to this?

2 MR. HOLT: Nothing, Your Honor. Thank you.

3 JUDGE SIPPEL: Okay. And by the way, I'm assuming  
4 that everybody that's here at counsel table have or will  
5 give their name to the Reporter before we break this  
6 morning. Now, what about witnesses? There are -- in  
7 addition to finishing up with Mr. Price -- and I'm aware,  
8 also, Mr. Begleiter, that we've got a 3:00 termination time  
9 today.

10 MR. BEGLEITER: Yes, Your Honor.

11 JUDGE SIPPEL: Mr. Barr, Mr. Ontiveros, Mr. Edward  
12 Milstein in addition to Mr. Price. I would suggest putting  
13 Mr. Barr at the end so that we're sure he got all the  
14 necessary discovery completed before he takes the stand.  
15 Now, I mean, that's my comment. Do you want to talk about  
16 the order of witnesses at this point?

17 MR. SPITZER: Your Honor, since we -- the schedule  
18 as we understand it is that we will have today's session and  
19 then resume next Monday morning --

20 JUDGE SIPPEL: Correct.

21 MR. SPITZER: -- we had thought that in the  
22 intervening days, there would be sufficient time to finish  
23 all the discovery. Just for scheduling reasons and not  
24 necessarily logic, we had thought we would resume with Mr.  
25 Barr next Monday morning. And you had just said you think

1 he should be last. And we will defer to your wishes on that  
2 if you think that you prefer for him to be last. But we had  
3 arranged for Mr. Barr, for him just to be next Monday and  
4 then to follow with Mr. Ontiveros and Mr. Milstein.

5 JUDGE SIPPEL: Okay. Well, there hasn't been any  
6 discovery of Mr. Barr. I mean, that was -- I made that  
7 decision earlier on in this case because I didn't see any  
8 need for his discovery. What's the situation now? Are you  
9 going to just offer him up without an opportunity to have  
10 him deposed?

11 MR. SPITZER: Well, Your Honor, we thought that  
12 given the -- the course of events and given the -- the fact  
13 that one of the meetings that has now -- or conversations  
14 that is now central to this development of facts is the  
15 Thursday the 27th conference call. We thought, frankly,  
16 since it's our burden, it made sense to -- to put that  
17 testimony forth and to offer him as a witness.

18 We got the sense certainly that the Bureau wished  
19 to hear from him as a witness. And I'm not saying Mr. Weber  
20 formally took that position, but it was our sense that it  
21 would assist the Bureau in -- in understanding the full set  
22 of facts here. And also, certainly Mr. Beckner has over the  
23 time beat the drum with some regularity about wishing to  
24 hear from Mr. Barr. So we thought we would offer him.

25 JUDGE SIPPEL: Well, I'd certainly -- I think I

1 indicated myself last week that I certainly expected -- I  
2 needed -- need to hear from him. What about this, Mr.  
3 Weber? What about the question of the preparation for his  
4 testimony, Mr. Barr's?

5 MR. WEBER: Well, we certainly could be ready to  
6 go by Monday. I am always a little troubled questioning  
7 witnesses that haven't been deposed. However, the Bureau  
8 would certainly hate to put further brakes on this  
9 proceeding by taking the time to schedule Mr. Barr for  
10 depositions, take his testimony that way and then  
11 rescheduling him to be a witness to testify here again. And  
12 therefore, I guess we would be willing to go ahead and allow  
13 him to come in as a witness sometime next week, be it Monday  
14 or be it after Mr. Ontiveros, and just to have him testify  
15 without his prior deposition.

16 JUDGE SIPPEL: Well, one thing you'll have, you'll  
17 have his -- you'll have his -- the time records -- you'll  
18 have the billing records. And if there's anything on a --  
19 on a daily calendar, you'll have that, also. You need time,  
20 however, ahead of time before he takes the stand to review -  
21 - at a minimum to review that information. And you think  
22 Monday would do it for you?

23 MR. WEBER: Yes, I do, Your Honor. We would have  
24 the remainder of this week. And we are certainly familiar  
25 enough with the issues here that I think we could certainly



1 be ready by next Monday.

2 JUDGE SIPPEL: All right. Well, what about his  
3 deposition this week? This is going to be -- is -- Tuesday,  
4 Wednesday, Thursday, Friday of this week?

5 MR. WEBER: Well, actually, we were looking at  
6 is -- scheduling his testimony without a prior deposition.  
7 I -- presumably, I don't see any reason why we couldn't take  
8 a deposition on Friday, as well.

9 JUDGE SIPPEL: How about it, Mr. Beckner?

10 MR. BECKNER: I don't have a strong preference for  
11 taking a deposition. I mean, I think the benefit of taking  
12 a deposition would be that the hearing testimony would be a  
13 little quicker and the examination would be more focused;  
14 less of a fishing expedition for lack of a better term. And  
15 certainly if Mr. Barr is available to be deposed Thursday or  
16 Friday of this week, I'd be prepared to do that. The only  
17 other comment -- and certainly if Liberty wants to offer Mr.  
18 Barr to testify at the hearing on Monday with or without a  
19 prior deposition, I'd be prepared to do that.

20 The only comment that I have is that I would  
21 prefer, frankly, to hear Mr. Edward Milstein's testimony  
22 before Mr. Barr, you know, because it appears that in this  
23 last week of April time period, he was the person along with  
24 Mr. Price who was involved in these conference calls and so  
25 on with the lawyers. So that's my only preference is that

1 is that Edward Milstein testify at the hearing before Howard  
2 Barr. And if -- if Your Honor senses that you'd rather have  
3 a more focused examination of Howard Barr at the hearing,  
4 then probably we should take his deposition this week in  
5 order to do that.

6 JUDGE SIPPEL: Well, from what there -- from what  
7 I'm hearing from you and from Mr. Weber -- I haven't asked  
8 Mr. Holt yet -- but it certainly doesn't sound to me like  
9 there's a definitive need to take his deposition. And I  
10 agree with both of your observations that certain the issues  
11 -- the factual issues are very much focused at this point as  
12 opposed to maybe ten days ago. So I'm just -- I just see  
13 that there is this -- you know, that there is this seemingly  
14 available time in any event. And the man has not been  
15 deposed yet. What are your views on this, Mr. Holt?

16 MR. HOLT: I think I concur with Mr. Beckner and -  
17 - that there's not a need at this point for a deposition.

18 JUDGE SIPPEL: All right. Then the other question  
19 is the order of witnesses. And would it be -- does this  
20 make any difference to you which goes first?

21 MR. SPITZER: It makes no difference at all, Your  
22 Honor. I mean, we haven't spoken to the witnesses about  
23 their availability. We will produce them. So whichever  
24 order you would prefer. If you think it makes most sense to  
25 have Mr. Barr as a last witness because then to the extent

1 he's not been deposed, at least the litigants and the  
2 attorneys have the benefit of all the prior testimony. We  
3 are happy to see what we can do at least to make sure that  
4 we can produce them in that sequence.

5 JUDGE SIPPEL: I think that makes sense to me.  
6 Anybody else have any -- I mean, Mr. Beckner, Mr. Holt, Mr.  
7 Weber? All right. Why don't we do it that way then? We'll  
8 have Mr. Edward Milstein -- Mr. Edward Milstein would make  
9 sense -- yes, Mr. Edward Milstein should come after Mr.  
10 Price, particularly in light of the testimony of Mr. Price  
11 about what transpired in -- on April 27th and 28th. And he  
12 was unsure. So, I mean, we do want to hear from Mr. Edward  
13 Milstein at least on that alone. And then of course there  
14 are some other questions in other areas that he's going to  
15 be questioned on, also.

16 And then -- all right. Then that would mean that  
17 we would finish up with Mr. Price on -- let me -- let me  
18 look to next week then. On January the 27th, if we haven't  
19 concluded today, we will finish up with Mr. Price. And by  
20 the way, I'm going to put a starting time of 9:30 on that --  
21 the 27th. So we can finish up with Mr. Price if we've not  
22 already done so, then start with Mr. Edward Milstein. And  
23 then on the 28th, we can finish up with Mr. Edward Milstein  
24 and start Mr. Ontiveros. And then on the 29th, we would  
25 finish up with Mr. Ontiveros and then pick up with Mr. Barr.

1           So I would expect that by the 30th which is a  
2   Thursday, that we would be completed with the testimony.  
3   And so -- I have seen no need to recall any witness yet.  
4   But, you know, there has to reach a point where there's a  
5   definitive cut-off of this testimony. And I think we're  
6   getting there. However, it's -- I'm not going to lock  
7   anything in yet because we still haven't heard from other  
8   witnesses. Okay? Does anybody have anything more? Mr.  
9   Beckner?

10           MR. BECKNER: Well, maybe I'm jumping ahead, Your  
11   Honor. I understood that you wanted to hear from us about  
12   our review of the documents that were produced to us a week  
13   ago today.

14           JUDGE SIPPEL: Yes.

15           MR. BECKNER: And I'm prepared to report to you.

16           JUDGE SIPPEL: All right. Why don't you take that  
17   up now then? I was kind of -- I was anticipating that that  
18   would be the -- what I'm concerned about primarily is the --  
19   two things: Is the thoroughness and review of the documents  
20   and the completeness of discovery production; and secondly,  
21   whether there's anything that's turned up in what you've  
22   seen thus far in the newly discovered evidence that would  
23   prompt -- you feel would prompt additional testimony or some  
24   additional discovery.

25           MR. BECKNER: The answer to the second question

1 was not. I mean, there's nothing that we've seen aside from  
2 the few documents that are already -- have now been put in  
3 the record that -- that, you know, would give me a reason to  
4 ask you to recall a witness who has already testified or to  
5 call a witness to testify who is not already scheduled.  
6 There is one document that we're -- it's another copy of a  
7 document that's already been produced, but this one has some  
8 writing on it. And we'll just offer it when Edward Milstein  
9 testifies. So that shouldn't cause any disruption in the  
10 flow of things that's already been established.

11 JUDGE SIPPEL: All right. Does that -- so that  
12 basically concludes your report then on that, on your review  
13 of the documents?

14 MR. BECKNER: Yes, sir. That's it.

15 JUDGE SIPPEL: Anything, Mr. Weber?

16 MR. WEBER: Nothing to add. We would just concur  
17 with Time Warner that there's nothing that we have seen that  
18 would make the Bureau decide to recall a witness, as well,  
19 or to bring an additional witness in to testify.

20 JUDGE SIPPEL: Mr. Holt?

21 MR. HOLT: I have nothing to add, Your Honor.  
22 There are some things that I would like to request from the  
23 witness. But nothing of the level that would require them  
24 to come back.

25 JUDGE SIPPEL: Well, we'll go under the -- under

1 the -- yes, Mr. Beckner?

2 MR. BECKNER: There's one other matter. If you  
3 recall in some of the examinations, I think I in particular  
4 asked about -- I asked Mr. Price about procedures and so on  
5 that were followed when a gentleman names Bruce McKinnon was  
6 working for the company. And you may recall, there's the  
7 1992 memorandum to Mr. McKinnon that was introduced I think  
8 in Mr. Price's direct testimony.

9 Now, Mr. McKinnon has been deposed in the case.  
10 And what I'd like to do is to simply offer portions of his  
11 deposition transcript. I'm not asking to have him called as  
12 a live witness. But I would want the opportunity before the  
13 record closes to offer some of his deposition transcript  
14 testimony on some of these issues, on the memorandum in  
15 particular, and on some of the matters about which I  
16 questioned Mr. Price.

17 MR. BECKNER: He's not employed by Liberty  
18 anymore. He works for someone else and he's -- I think he  
19 was the business manager of a large Boston law firm. And I  
20 believe his wife is ill.

21 MR. BEGLEITER: She was ill --

22 MR. BECKNER: She was ill. She has cancer or  
23 something like that. So, you know, in light of all that,  
24 I'm not asking to drag him down here because I don't think  
25 it's necessary and I think the testimony is already in the

1 deposition record. But I would like to be able to offer  
2 that.

3 JUDGE SIPPEL: Well, if you're going to offer the  
4 portions of it -- and I haven't heard from Mr. -- from  
5 Liberty's side of the table on this. But it would be the  
6 whole thing. It wouldn't be just portions.

7 MR. BECKNER: Well, that would be fine, Your  
8 Honor.

9 JUDGE SIPPEL: But, again, the weight to be  
10 attributed to that is -- is -- apparently is going to be  
11 less than if the witness would come forward to testify live  
12 at the hearing. So I'm not so -- I'm just not all together  
13 clear what you think that might add to the situation. If  
14 somebody here is telling us -- is giving us what you feel to  
15 be false or inconsistent testimony with Mr. McKinnon's view  
16 of things, it would -- these are the witnesses that should  
17 be asked about that.

18 MR. BECKNER: Well, in that event, I'll be  
19 specific. I think this is in our issue papers. I mean,  
20 first off, Mr. McKinnon's view of this memorandum that was  
21 sent to him by Mr. Price is rather different from Mr. Price,  
22 at least as Mr. Price expresses it now. And -- and it is --  
23 let me see if I can identify this one by name for you.

24 JUDGE SIPPEL: Is this -- this is the  
25 Liberty/Bureau Exhibit Number 2?

1 MR. BECKNER: Yes, Your Honor. Liberty/Bureau  
2 Exhibit Number 2. In Mr. McKinnon's testimony, if I could  
3 characterize it, it basically was that this document is a  
4 whole lot less important than -- than Mr. Price or Mr.  
5 Howard Milstein has said it was. So that's -- that's the  
6 first point that I would make from Mr. McKinnon's testimony.  
7 The second point that I would make from Mr. McKinnon's  
8 testimony is I think he testified about -- quite clearly was  
9 that when he was running the operations, that he himself  
10 affirmatively determined that Liberty had authorization or  
11 an STA or a license for permitting Mr. Nourain or the  
12 operations department to activate any new microwave path.

13 JUDGE SIPPEL: When did he leave though?

14 MR. BEGLEITER: May 1993, approximately a year --  
15 13 or so months before anything --

16 MR. SPITZER: Relevant to this proceeding.

17 MR. BEGLEITER: Well, not relevant. Before the  
18 major acts that are involved here occurred.

19 MR. BECKNER: Well, the relevance of his testimony  
20 is that if you -- if you believe his testimony and you  
21 believe Mr. Nourain's, then there appears to have been a  
22 change in the procedure that Liberty followed for activating  
23 new microwave paths while Mr. Price has testified that there  
24 was no change in the procedure.

25 JUDGE SIPPEL: Well, I think -- yes, I think that



1 from my understanding of the testimony, I think you're  
2 taking it a little bit too far. And in light of the -- I  
3 mean, I'm -- of course, I'm open to be shown in proposed  
4 findings that it may be somewhat otherwise. But I -- the --  
5 the -- the fact that it was in 1993 that he left -- and  
6 these things really -- the focus here is really late '94  
7 through '95, through the middle of '95. Again, I wouldn't  
8 want to bring in just deposition testimony for purposes of  
9 making any significant finding in this case, at least on  
10 this issue -- on these issues.

11 MR. BECKNER: Well, the point was raised first by  
12 Liberty that they -- or rather that through their testimony,  
13 that they put in a set of procedures back in 1992. And they  
14 point to this Liberty/Bureau Exhibit 2 in support of that.  
15 And the recipient of that memorandum -- and his testimony  
16 doesn't really -- doesn't really support the specific  
17 conclusion that's offered from the memorandum.

18 JUDGE SIPPEL: I would -- I would perk up at that  
19 if -- you know, if he had been in that position or in a  
20 similar position in, you know, early '95. But he left in  
21 '93. And I don't -- you know, it's -- it's going after --  
22 to me it's going after a collateral issue which I think is  
23 going to add -- it's more of a distraction than it is a  
24 focused kind of evidence. Does anybody -- Mr. Holt, do you  
25 want to comment on that? Are you basically the same as Mr.